CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 304 110.

THE CINCINNATI STREET RAILWAY COMPANY, PLAINTIFF IN ERROR,

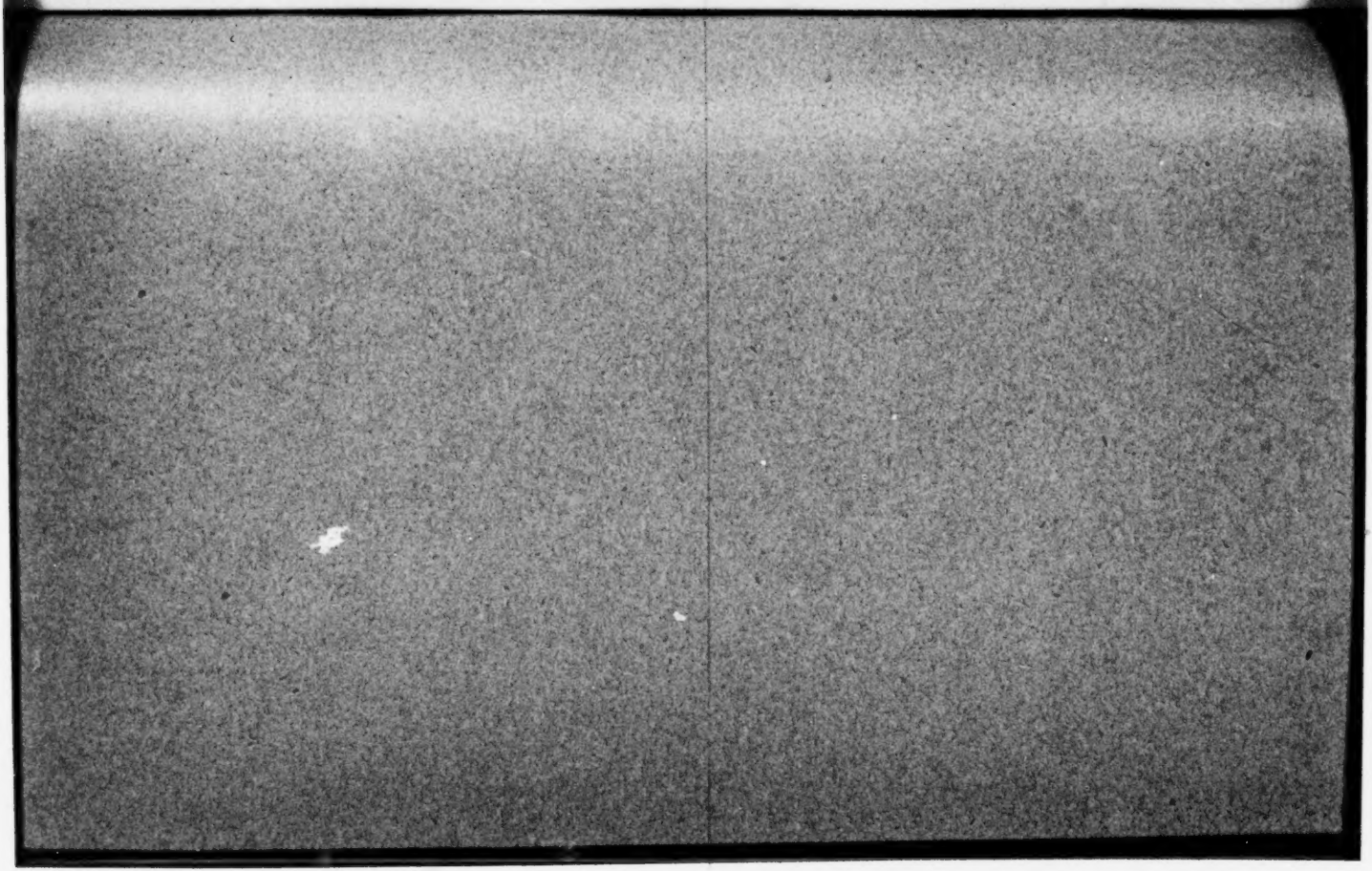
vs.

CHARLES B. SNELL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED JULY 28, 1899.

(17,478.)



(17,478.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 364.

THE CINCINNATI STREET RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES B. SNELL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

	Original.	Print.
Caption	1	1
Petition in error	3	1
Præcipe for summons in error	4	2
Summons in error	5	2
Sheriff's return	5	3
Transcript from circuit court of Hamilton county	6	3
Docket and journal entries	6	3
Answer of railway company	6	3
Amendment to answer	8	4
Judgment	9	4
Transcript from court of common pleas of Hamilton county	10	5
Docket entries	10	5
Bill of exceptions	11	6
Affidavit of Chas. B. Snell	12	6
Wm. Schmidt	13	6
Lewis Stentz	13	7
Orlestus C. Trisler	14	8
John W. Wolfe	15	8
Thos. L. Michie	16	9
Judge's certificate to bill of exceptions	18	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 10, 1900.

	Original	Print
Clerk's certificate	19	10
Docket and journal entries	20	10
Judgment	20	10
Clerk's certificate	22	12
Bond on writ of error	24	13
Clerk's certificate	25	14
Petition for writ of error	27	14
Assignment of errors	31	16
Writ of error	34	16
Citation	37	18
Proof of service of citation	38	18

1 & 2 In the Supreme Court of Ohio.

CHARLES B. SNELL, Plaintiff in Error,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant in Error. } No. 6269.

Error to circuit court of Hamilton county, O.

Record.

John W. Wolfe, Thos. L. Michie, attorneys for plaintiff in error.
Paxton, Warrington & Boutet, attorneys for defendant in error.

Filed Oct. 4, 1898, in supreme court of Ohio.
J. B. ALLEN, *Clerk.*

3 In the Supreme Court of Ohio.

CHARLES B. SNELL, Plaintiff in Error,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant in Error. } (No. 6269.)

Petition in Error.

(Filed September 21, 1898)

Charles B. Snell, the plaintiff in error, complains of The Cincinnati Street Railway Company, a corporation, defendant in error, for that at the June term, 1898, the said defendant in error recovered a judgment against the plaintiff in error in a certain cause pending in the circuit court of Hamilton county, Ohio, wherein Charles B. Snell was plaintiff in error and The Cincinnati Street Railway Company was defendant in error, wherein said court affirmed the judgment of the common pleas court of Hamilton county, Ohio, in a certain action therein pending, wherein the said Charles B. Snell was plaintiff and The Cincinnati Street Railway Company was defendant.

Plaintiff in error files herewith a transcript of the docket and journal entries in said cause and the original papers and the record in said cause.

4 Plaintiff in error avers that there is error in said record in this, to wit:

1. The circuit court of Hamilton county, Ohio, committed error in affirming the judgment of the court of common pleas in said cause.

2. The circuit court of Hamilton county, Ohio, erred in rendering judgment in favor of the defendant in error and against the plaintiff in error.

3. The circuit court of Hamilton county, Ohio, erred in affirming judgment of the court of common pleas of Hamilton county, Ohio, which overruled and denied the motion of the plaintiff in error to change the venue in the said action to the adjoining county from the said Hamilton county, most convenient to the parties to said action, pursuant to the provisions of section 5033 of the Revised Statutes of Ohio.

Wherefore plaintiff in error prays that said judgment of the circuit court may be reversed and that it may be restored to all rights which it has lost by reason thereof.

JOHN W. WOLFE,
THOS. L. MICHIE,
Attorneys for Plaintiff in Error.

Precipe.

Hon. J. B. Allen, clerk supreme court, Columbus, O.:

The attorneys for defendant in error refused to accept service. Let summons in error issue, directed to the sheriff of Hamilton county, Ohio.

Yours truly,

JOHN W. WOLFE AND
THOS. L. MICHIE,
Attorneys for Plaintiff in Error.

5 *Summons in Error.*

(Filed September 24, 1898.)

THE STATE OF OHIO, }
City of Columbus. }

To the sheriff of the county of Hamilton:

You are hereby commanded to notify The Cincinnati Street Railway Company, defendant in error, that Charles B. Snell, plaintiff in error, has filed a petition in the clerk's office of the supreme court of the State of Ohio, asking a reversal of a judgment which defendant in error obtained against plaintiff in error at the June term, A. D. 1898, of the circuit court of Hamilton county, and that unless the said defendant in error attend forthwith before said supreme court, said judgment may be reversed.

You will make due return of this summons October 3, A. D. 1898.

[SEAL.] Witness my hand and the seal of said supreme court this twenty-first day of September, A. D. 1898.

JOSIAH B. ALLEN,
Clerk of Supreme Court of Ohio,
By CHAS. C. PICKERING, *Deputy.*

Sheriff's Return.

1898, September 22.—Served the within-named The Cincinnati Street Railway Company, defendant in error, by delivering a true copy of this writ, with all the endorsements thereon, personally to James A. Collins, secretary thereof, no other chief officer being found.

CHRIS REICHEL,
Sheriff of Hamilton County, O.,
By ROB'T SWEENY, *Deputy.*

6 In the Circuit Court of Hamilton County, Ohio.

CHARLES B. SNELL, Plaintiff in Error,
against
THE CINCINNATI STREET RAILWAY COMPANY, Defendant in Error.

Transcript of Docket and Journal Entries.

To July 5, 1897.—Petition in error, transcript and original papers and bill of exceptions filed June 23, 1897. Common pleas No. 94336.

1897, June 23.—Summons in error issued.

1897, July 3.—Summons in error returned 1897, June 23. Served the within-named The Cincinnati Street Railway Company, defendant in error, by delivering a true copy of this writ, with all the endorsements therein, personally to James R. Collins, secretary thereof, no other chief officer being found. Chris Reichel, sheriff of Hamilton Co., O., by Rob't Sweeny, deputy sheriff. Fees, $1.

1898, June 16.—Min. 195. Answer of Cincinnati Street Railway Co. filed by leave.

Now come The Cincinnati Street Railway Company, defendant in error herein, and for answer to the petition of plaintiff in error, says,

7 that since the date of the entry made in this cause on December 26, 1896, overruling plaintiff's motion for a change of venue, and to reverse which the present proceedings in error are prosecuted, the plaintiff requested the cause to be set for trial and to be tried before Hon. Howard Hollister, judge, and a jury, in the common pleas court of Hamilton county, Ohio; that the cause was tried before such court and jury, without objection on plaintiff's part, and a verdict therein was rendered against the plaintiff and in favor of the defendant Street Railway Co.; that judgment was entered upon the verdict on May 22, 1897, in favor of defendant, The Street Railway Co.; that said judgment is unreversed; and that no proceedings in error have been commenced or prosecuted by plaintiff to reverse or vacate said judgment.

Wherefore defendant in error prays that, since the order overruling the motion for change of venue was interlocutory and not final, and since no other proceedings in error have been commenced

herein, the present petition in error may be dismissed, and that it may go hence without day and recover its costs herein.

PAXTON, WARRINGTON AND BOUTET,
Attorneys for Defendant in Error.

STATE OF OHIO, } ss:
Hamilton County, }

John Kilgour, being duly sworn, says he is president and general manager of the Cincinnati Street Railway Co., and that the facts stated in the foregoing answer are true, as he believes.

JOHN KILGOUR.

Subscribed and sworn to before me this sixteenth day of June, 1898.

J. D. MEEKER,
Notary Public, Ham. Co., O.

8 1898, July 11.—Min., 283.

Amendment Filed by Leave.

Now comes The Cincinnati Street Railway Company, defendant in error, and by leave of court first had and obtained and by way of amendment to its answer herein, without withdrawing any of the averments thereof, says:

That it is advised and so alleges, that section five thousand and thirty-three (5033) of the Revised Statutes of Ohio is in conflict with the constitution of Ohio, and more particularly with section one, two and sixteen, article one thereof, or the bill of rights; that said section of said Revised Statutes is also in conflict with the Constitution of the United States, and more particularly with section one of article fourteen thereof; and that said Revised Statutes is null and void for these reasons.

Wherefore defendant in error prays as in its original answer, and also that said section of said Revised Statutes be declared and held to be null and void.

PAXTON, WARRINGTON & BOUTET,
KITTREDGE & WILBY,
Attorneys for Defendant in Error.

1898, July 18.—Min., 300.

Entry of Affirmance.

This cause came on for hearing upon the petition in error, the transcript and original papers and pleadings from the court of common pleas of Hamilton county, and was argued by counsel; on consideration whereof the court find there is no error apparent upon the record and proceedings in said court.

9 It is therefore considered by this court that the judgment rendered by the court below be and the same is hereby af-

ffirmed; that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at $—, and that a special mandate be sent to the common pleas court for execution upon this judgment.

To all of which the plaintiff in error excepts.

1898, July 25.—Min. 367. Reply of Charles B. Snell filed by leave.

(Duly certified.)

10 Court of Common Pleas, Hamilton County, Ohio.

CHARLES B. SNELL, Plaintiff,
against
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation under the Laws of Ohio, Defendant.

Additional Transcript of Docket Entries.

1895, March 30.—Min. 1222. Mandate from circuit court. Judgment reversed. Cause remanded.

1896, March 4.—Mandate from supreme court filed.

March 6.—Min. 1074. Mandate from supreme court. Judgment of circuit court affirmed.

April 7.—Min. 1703. Jury impaneled and sworn. Cause progressed first day.

April 8.—Min. 1704. Cause progressed second day.

April 9.—Min. 1705. Cause progressed third day.

April 10.—Min. 1708. Cause progressed fourth day.

April 13.—Min. 1709. Cause progressed, jury disagreed, case continued.

October 1.—Affidavit for change of venue filed.

October 1.—Motion for change of venue filed.

October 13.—Min. 1709. Entry overruling change of venue. Plaintiff excepts.

Nov. 27.—Motion for change of venue filed.

Nov. 27.—Affidavit for change of venue filed.

11 Dec. 26.—Min. 1796. Entry overruling motion for change of venue. Plaintiff excepts.

1897, Jan. 28.—Min. 2026. Entry allowing bill of exceptions.

Jan. 28.—Min. 2026. Bill of exceptions filed by leave.

April 15.—Min. 1709. Jury impaneled and sworn, cause progressed first day.

April 16.—Min. 1710. Cause progressed second day.

April 19.—Min. 1712. Cause progressed third day.

April 20.—Min. 1713. Cause progressed and verdict for defendant.

April 22.—Motion for new trial filed.

May 22.—Min. 1731. Entry overruling motion for new trial and judgment on verdict for debt, with costs. Defendant excepts.

(Duly certified.)

Bill of Exceptions.

(Filed June 23, 1897.)

Be it remembered that heretofore to wit, on the twenty-seventh day of November, 1896, the plaintiff, Charles B. Snell, filed his motion in the above-entitled cause for change of venue in the above-entitled action, to the adjoining county to the said Hamilton county, most convenient for both parties to the said action, pursuant to the provisions of section 5033, of the Revised Statutes of Ohio, and that on said date, the plaintiff in the above-entitled action, Charles B. Snell, in support of the said motion, filed his own affidavit
12 and the several affidavits of William Schmidt, Jr., Lewis Stentz, Orlestus C. Trisler, John W. Wolfe and Thos. L. Michie, which affidavits were in the words and figures following:

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY, Defendant. } Affidavit.

"STATE OF OHIO,
Hamilton County, } *ss:*

"Charles B. Snell, being duly sworn, says that he is the plaintiff in the above-entitled action, now pending in the court of common pleas, of the said Hamilton county; that the defendant in the above-entitled action is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant cannot, as he believes, have a fair and impartial trial in the said county.

"(Signed) CHARLES B. SNELL.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, A. D. 1896.

"[SEAL.] JOEL C. CLORE,
"*Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

13 "STATE OF OHIO,
Hamilton County, } *ss:*

"William Schmidt, Jr., a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now,

and for three years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas, of the said Hamilton county; that The Cincinnati Street Railway Co., the defendant in the above-entitled action, is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county said defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) WM. SCHMIDT, JR.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,

"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff, *vs.* THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant.	Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Lewis Stentz, a credible person, being duly sworn, says
14 that he resides in the said Hamilton county, Ohio; that he is now and for one year last past, has been engaged in the business of life insurance, as managing agent of the Northwestern Life Assurance Company, and has resided for the past five (5) years in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas of the said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) LEWIS STENTZ.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, A. D. 1896.

"[SEAL.] JOEL C. CLORE,

"*Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Orlestus C. Trisler, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for three (3) years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas, in the said Hamilton county; that The Cincinnati Street Railway Co., the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) ORLESTUS C. TRISLER.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,
"*Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"John W. Wolfe, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for twelve years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas, in the said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant

believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) JOHN W. WOLFE.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,

"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Thos. L. Michie, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for four years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action now pending in the
17 court of common pleas of said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio; in which said county the said defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) THOMAS L. MICHIE.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,

"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

That the above was all the evidence introduced by either the plaintiff or the defendant in support of or against said motion.

That on the twenty-sixth day of December, 1896, the said motion came on for hearing upon the said affidavits hereinbefore set out, before the honorable common pleas court of Hamilton county, Ohio, and was argued by counsel and submitted to the court; and thereupon the honorable court of common pleas of Hamilton county, Ohio, overruled and denied the said motion; to which action and ruling of the court, in denying and overruling the said motion, the said Charles B. Snell, the plaintiff in the above-entitled action,

then and there excepted, and now comes and tenders this,
18 his bill of exceptions, and prays that the same may be allowed, signed, sealed and made a part of the record in the above-entitled cause, which is hereby accordingly done.

Witness the hand and seal of the court this twenty-eighth day of January, 1897.

M. F. WILSON,
Judge Court of Common Pleas.

19 Supreme Court of Ohio.

CLERK'S OFFICE, COLUMBUS, *July 12th*, 1899.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the foregoing is a true copy of the printed record filed in this court in cause No. 6269—Charles B. Snell *vs.* The Cincinnati Street Railway Co.—and used by said court in consideration of said cause.

Witness my hand and the seal of said court this 12th day of July, A. D. 1899.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

20 THE STATE OF OHIO, } ss.
City of Columbus, }

In the Supreme Court of Ohio, January Term, A. D. 1899.

Certified Transcript of Docket and Journal Entries.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

CHARLES B. SNELL, Plaintiff in Error, *vs.* THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant in Error.	# 6269. Error to the Circuit Court of Hamilton County.

Sept. 21, 1898.—Petition in error and precipe filed.
" " " —Circuit court transcript filed.
" " " —Original papers and bill of exceptions filed.
" " " —Summons issued for defendant in error, directed to the sheriff of Hamilton Co.; returnable Oct. 3rd, A. D. 1898.
" 23, " —Part of papers taken by New Franklin Printing Co.

" 24, " —Summons returned and filed, endorsed: "1898, September 22nd.—Served the within-named The Cincinnati Street Railway Company, defendant in error, by delivering a true copy of this writ, with all the endorsements thereon, personally to James A. Collins, secretary thereof, no other chief officer being found." "Chris. Reichel, sheriff of Ham. Co., O., by Rob't Sweeny, deputy." "Fees, $1.24."

Oct. 4, " —Papers returned.

" " " —Printed record filed.

" 5, " —Printer's receipted bill filed.

" 6, " —Proof of service of printed record filed.

" 20, " —Plaintiff's printed brief & proof of service filed.

Nov. 5, " —Motion by plaintiff to advance, notice, & affidavit filed.

" 10, " —Typewritten brief of defendant on motion filed.

" 22, " —Journal entry: "Ordered by the court that said motion be, and the same is hereby, overruled. Case will take its place on the docket by its former number, 4464. Defendant's brief to be filed in 60 days. Request for oral argument noted." O. B. No. 16, pg. 220.

Feb'y 9, 1899.—Defendant's printed brief and proof of service filed.

May 9, " —Journal entry: "This cause came on to be heard upon the transcript of the record of the circuit court of Hamilton county and was argued by counsel. On consideration whereof it is ordered and adjudged by this court that the judg-
21 ment of the said circuit court be, and the same hereby is, reversed, with costs; and, proceeding to render the judgment which the court should have rendered, it is considered and adjudged that the judgment of the court of common pleas be, and the same is hereby, reversed, with costs, for error in overruling the motion of the plaintiff for a change of venue.

It is further considered and adjudged that the plaintiff in error recover of the defendant in error his costs in this court and in the circuit court expended, to be taxed, and that the cause be remanded to the court of common pleas, with directions to grant the change of venue and for further proceedings according to law.

Ordered that a special mandate be sent to the court of common pleas of Hamilton county to carry this judgment into execution.

Ordered that a copy of this entry be certified to the clerk of the circuit court of Hamilton county 'for entry.'" O. B. No. 16, pg. 392.

May 16, 1899.—Mandate issued.
" " " —Original papers sent to clerk.
June 8, " —Journal entry: "On motion of said defendant in error, The Cincinnati Street Railway Company, this court order it to be certified and made part of the record in this case and of the judgment and entry of reversal heretofore rendered and made herein that in the rendition of said judgment of reversal it became and was material to the case to determine whether the certain act of the General Assembly of the State of Ohio known as and numbered section 5033 of the Revised Statutes of said State of Ohio was of binding force and validity against the said Cincinnati Street Railway Company, a corporation created by and existing under the laws of said State.

And the court order it to be further certified that said defendant in error claimed and asked this court to hold that said act, to wit, section 5033 of said Revised Statutes, is repugnant to the first section of the XIV amendment of the Constitution of the United States.

And the court order it to be further certified that the decision of the court was and is in favor of the validity of said statute.

It is hereby further certified that this court is the highest court of law and equity in the State of Ohio in which a decision of this case can be had." O. B. No. 16, pg. —.

June 8, 1899.—Supersedeas bond filed.
July 18, " —Copy of writ of error filed.

22 STATE OF OHIO, *City of Columbus,* } ss:

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing transcript of docket and journal entries in the case of Charles B. Snell against The Cincinnati Street Railway Company, No. 6269, is truly taken and correctly copied from the records of said court, to wit, from Minute Book No. 19, page 559, and Order Book No. 16, pages 220 and 392.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this 8th day of June, A. D. 1899.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

23 [Endorsed:] In the supreme court of the State of Ohio. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. Certified transcript.

24 In the Supreme Court of the United States, October Term, 1898.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error.
} In Error to the Supreme Court of the State of Ohio.

Know all men by these presents that we, The Cincinnati Street Railway Company, as principal, and John Kilgour and William R. Avery, as sureties, are held and firmly bound unto Charles B. Snell in the full and just sum of five hundred ($500.00) dollars, to be paid to the said Charles B. Snell, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, — the supreme court of the State of Ohio, in a suit depending in said court between Charles B. Snell, plaintiff in error, and The Cincinnati Street Railway Company, defendant in error, a judgment was rendered against said The Cincinnati Street Railway Company, and said The Cincinnati Street Railway Company having obtained a writ of error and filed a copy thereof in the office of the clerk of said court to reverse the judgment in the aforesaid suit, and a citation directed to said Charles B. Snell, citing and admonishing him to be and appear at the session of the United States Supreme Court, to be holden at the city of Washington, within — days from the date thereof:

Now, the condition of the above obligations is such that if said The Cincinnati Street Railway Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of the Cincinnati Street Railway Co., Ohio, Org. July 1, 1880.]

CINCINNATI STREET R'Y CO.,
By JOHN KILGOUR, *President.*
JOHN KILGOUR. [SEAL.]
WM. R. AVERY. [SEAL.]

Sealed and delivered in presence of—
JOHN TAYLOR.
HOWARD R. PORTER.

Bond approved.

JOHN A. SHANCK,
Acting Chief Justice, Supreme Court of Ohio.

Approved June 29th, '99.
JOHN M. HARLAN,
Justice S. C. U. S.

25 STATE OF OHIO, *City of Columbus,* } *ss:*

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the bond hereto attached is a true copy of the bond filed in this court in the case of The Cincinnati Street Railway Company *vs.* Charles B. Snell, in which writ of error has been allowed in the Supreme Court of the United States, and that said bond was approved by Honorable John M. Harlan, one of the justices of said court, June 29th, A. D. 1899.

Witness my hand and the seal of said supreme court of Ohio this 18th day of July, A. D. 1899.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

26 [Endorsed:] Duplicate. In the Supreme Court of the United States. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. In error to the supreme court of Ohio. Bond. Filed Jun- 8, 1899, in supreme court of Ohio. J. B. Allen, clerk.

27 In the Supreme Court of the United States.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error, *vs.* CHARLES B. SNELL, Defendant in Error. } In Error to the Supreme Court of the State of Ohio.

To the Hon. John M. Harlan, a justice of the Supreme Court of the United States:

Your petitioner, The Cincinnati Street Railway Company, a corporation organized under the laws of Ohio and doing business in the city of Cincinnati, in said State, to your honor respectfully represents and sets forth that at the October term, A. D. 1896, of the court of common pleas of the county of Hamilton, in said State, in a case wherein one Charles B. Snell was plaintiff and your petitioner, The Cincinnati Street Railway Company, was defendant, a judgment and order were rendered and made by said common pleas court in favor of your petitioner and against said Snell in the overruling of a certain motion and application made and filed by said Snell for a change of venue from said county wherein said cause was brought and was pending to another county of said State; that afterwards, on application of said Snell and without objection on his part, said cause was heard and decided finally upon its merits in said court of common pleas, and the verdict of the jury and the judgment thereon of said court were rendered in favor of your petitioner, the said judgment having been rendered on May 22, 1897; that afterwards said Snell caused a petition in error to be presented

to the circuit court for the first judicial district of *of* said State
28 in said county of Hamilton to reverse said final judgment solely on account of the error alleged to have been committed in overruling said application and motion for change of venue, but the same was at the January term, A. D. 1898, affirmed by said circuit court; that afterwards said Snell caused a petition in error to be presented to the supreme court of Ohio to reverse said judgment of affirmance, as well as the judgment and order of the said court of common pleas overruling said application and motion for change of venue, but on account only of the overruling of said application and motion, as aforesaid, and that the same were at the January term, A. D. 1899, to wit, on May 9th, reversed by said supreme court solely on the ground aforesaid, and a mandate was ordered to be issued commanding the said inferior courts to grant said motion and application for change of venue.

Your petitioner further represents and states that said application and motion were made under and in pursuance of section 5033 of the Revised Statutes of the State of Ohio, which is in words and figures as follows:

"SEC. 5033. When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties."

It was specially set up and claimed by your petitioner that said statute was in conflict with the Constitution of the United States, and particularly with section 1 of article XIV in amendment thereof, and the said supreme court of Ohio (being the highest court of law or equity in said State in which a decision can be had in said cause) decided in favor of the validity of said statute,
29 and the judgment is in its practical operation and effect a denial to your petitioner of the equal protection of the laws of said State of Ohio, all of which appears plainly upon the face of the record of said cause, a certified transcript of which is presented herewith.

Thereupon your petitioner asks leave to have its writ of error in this behalf, to the end that it may be determined by the judgment of the Supreme Court of the United States whether said statute is not in conflict with the provisions of the Constitution of the United States; and it prays further for a supersedeas, and that the amount of the bond therefor may be fixed by your honor.

J. W. WARRINGTON,
E. W. KITTREDGE,
Att'ys for the Cincinnati Street Railway Company.

Writ allowed this June 29th, 1899.

JOHN M. HARLAN,
Asso. Justice Supreme Ct. U. S.

30 [Endorsed:] In the Supreme Court of the United States, October term, 1898. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. In error to the supreme court of Ohio. Petition for writ of error.

31 In the Supreme Court of the United States, October Term, 1898.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error, *vs.* CHARLES B. SNELL, Defendant in Error.	In Error to the Supreme Court of the State of Ohio.

Assignment of Errors.

On the — day of ——, 1899, of the same term, before the justices of the Supreme Court, at the Capitol, in the city of Washington, came the said The Cincinnati Street Railway Company, by Edmund W. Kittredge and John W. Warrington, its attorneys, and said that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. That the supreme court of the State of Ohio erred in holding that section 5033 of the Revised Statutes of Ohio, involved in said cause, is not in conflict with the Constitution of the United States, and particularly with article XIV in amendment thereof.

Second. That said court erred in reversing the judgments of the circuit court of the first judicial district of the State of Ohio and the common pleas court of Hamilton county, Ohio, when by the law of the land said judgments ought to have been affirmed.

Third. That said court erred in entering judgment in favor of said Charles B. Snell and against the said The Cincinnati Street Railway Company.

32 And said The Cincinnati Street Railway Company prays that the judgment of the supreme court aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it has lost by reason of the said judgment.

J. W. WARRINGTON,
E. W. KITTREDGE,
Attorneys for Plaintiff in Error.

33 [Endorsed:] In the Supreme Court of the United States, October term, 1898. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. In error to the supreme court of Ohio. Assignment of errors.

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before

you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles B. Snell, plaintiff in error, and The Cincinnati Street Railway Company, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done
35 to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
—— ——.

36 [Endorsed:] The United States of America, *ss:* In the Supreme Court of the United States, October term, 1898. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. In error to the supreme court of Ohio. Writ of error.

37 In the Supreme Court of the United States, October Term, 1898.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error, *vs.* CHARLES B. SNELL, Defendant in Error.	In Error to the Supreme Court of the State of Ohio.

United States of America to Charles B. Snell, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein The Cincinnati Street Railway Company, a corporation under the laws of the State of Ohio, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John Marshall Harlan, associate justice of the Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Marshal's civil docket, No. 1027.

38 On this 24th day of July, 1899, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared W. J. Sanderson before me, the subscriber, Robert C. Georgi, deputy clerk United States district court, southern district of Ohio, and makes oath that he delivered a true copy of the within citation to Charles B. Snell personally on the 22d day of July, A. D. 1899.

Seal United States District Court, Southern Dis. Ohio.

W. J. FAGIN,
Marshal, S. D. O.,
By W. J. SANDERSON, *Deputy.*

Sworn to and subscribed the 24th day of July, A. D. 1899.
[Seal United States District Court, Southern Dis. Ohio.]

ROB'T C. GEORGI,
Deputy Clerk U. S. District Court, S. D. O.

Marshal's Fees.

Fees:

4 mi., writ	.24
Service	2.00
	$2.24

Clerk's fees, $.45.

39 [Endorsed:] In the Supreme Court of the United States, October term, 1898. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. In error to the supreme court of Ohio. Citation.

Endorsed on cover: File No., 17,478. Ohio supreme court. Term No., 364. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell. Filed July 28, 1899.